IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15574 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVRAM KANTILAL RAVAL - Petitioner(s)

Versus

SARDARGANJ MERCANTILE COOP BANK LTD - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 05/08/2005

ORAL JUDGMENT

1) In this petition under Articles 226 and 227 of the Constitution of India, the petitioner workman has challenged the legality and validity of the judgment and award passed by the Industrial Court, Ahmedabad

dated 6.3.2004 passed in Appeal (IC) No.110 of 2002 in allowing the said appeal and quashing and setting aside the judgment and award passed by the Labour Court, Kalol dated 28.8.2002 passed in T-Application No.18 of 1986.

2) The petitioner was serving as Peon with the respondent Bank. A complaint was filed by one Chamanji Karshanji Bhil who was having bank account in the said bank and that he has given Rs.700/- to the petitioner on 18.7.1985 for depositing the same in his account which was not deposited by the petitioner and when he went to withdraw the said amount on 15.10.1985, it was found by him that the petitioner had not deposited the said amount of Rs.700/- in his account. On the aforesaid complaint, the petitioner deposited the said amount in the account of the said complainant and the petitioner had admitted his guilt. However, considering the fact that there was temporary misappropriation of Rs.700/- and that it was not in the interest of bank to continue the petitioner, departmental inquiry was initiated against him and on conclusion of the departmental inquiry and holding the charge of temporary misappropriation proved against him, the disciplinary authority i.e bank passed the order dismissing the petitioner from service.

3) The petitioner raised the industrial dispute challenging his dismissal by approaching the Labour Court, Kalol by way of T-Application No.18 of 1986 under the provisions of the Bombay Industrial Relations Act, 1946. It was contended on behalf of the petitioner that complainant Chimanji Karshanji Bhil was known to him and in fact, he has given in writing to the said Chimanji with regard to accepting Rs.700/-. However, the petitioner has forgotten to deposit the amount of Rs.7,00/- in the account of the said Chamanji and it was not the intention on the part of the petitioner to misappropriate the amount and therefore, it was requested to quash and set aside the order of dismissal. Accepting the above submission and the case of the petitioner, the Labour Court, Kalol by its judgment and award dated 28.8.2002 allowed the said application in part and directed that the petitioner be reinstated with 20 % of the backwages only, however, with continuity of service.

4) Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Kalol dated 28.8.2002 passed in T-Application No.18 of 1986, the respondent Bank preferred an appeal under Section-84 of the BIR Act before the Industrial Court, Ahmedabad being Appeal (IC) No.110 of 2002 and the Industrial Court considering

the fact that the petitioner has admittedly temporarily misappropriated the amount of Rs.700/- which was deposited by the petitioner only on filing of the complaint by the account holder and due to which the image and credibility of the bank got damaged, allowed the appeal by quashing and setting aside the judgment and award passed by the Labour Court. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Court, Ahmedabad dated 6.3.2004 passed in appeal by allowing the same and quashing and setting aside the judgment and award passed by the Labour Court, Kalol, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

5) Shri Mukesh H. Rathod, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Industrial Court has materially erred in allowing the appeal and has not properly appreciated the fact that in fact the complainant was known to the petitioner and in fact, he had given in writing to the effect that Rs.700/- was given by said Shri Chimanji to the petitioner. It is submitted that if the intention of the petitioner was to misappropriate the amount then he would not have given in writing, therefore, there was no question to misappropriate the amount, therefore, it is requested to allow the present special civil

application. It is further submitted that in fact Rs.700/- came to be deposited by the petitioner on the same day and therefore, there was no question of any misappropriation of the amount and therefore, it is also requested to allow the present special civil application. It is also further submitted that in fact, the petitioner was serving as Peon and was not the Cashier and if the said complainant Shri Chamanji was to deposit the said amount, the same ought to have been done through the Cashier and therefore, the petitioner has not committed any misconduct by accepting the amount from the said Shri Chamanji and therefore, it is requested to allow the present special civil application.

6) It is true that the petitioner was serving as the Peon and not as the Cashier. However, one Shri Chamanji Karsanji Bhil who appears to be a Tribal man has given a sum of Rs.700/- to the petitioner for depositing the same in his account as the petitioner was known to him and the petitioner accepted the said amount also, however, did not deposit the said amount in the account of said Shri Chamanji Karsanji Bhil. That said Chamanji Karsanji Bhil came to know about the same on 15.10.1985 after a period of three months at the time when he went to withdraw the said amount from his account and it was found that the said amount was not deposited in his account by the petitioner and

therefore, he lodged the complaint with the bank. On lodging the complaint, the petitioner deposited the said amount of Rs.700/- and has given in writing accepting his guilt. Now, in this set of circumstances, it is required to consider whether the petitioner has committed any misconduct or not, and that, whether the act of the petitioner has affected the image of the bank or not ? The amount was given to the petitioner on 15.7.1985 by said Shri Chamanji Karsanji Bhil to deposit the same in his account which was not deposited till 15.10.85 and had deposited only when the said Chamanji filed by the complaint. It is the contention on behalf of the petitioner that though the amount was given to him by said Chamanji to deposit the same in his account, by mistake it was not deposited by him. Such contention cannot be accepted as it was not the small amount, means, a sum of Rs.700/- so far as the account holder was concerned and it was the substantial amount for said Shri Chamanji. Under the circumstances, though it cannot be said that it is a case of misappropriation but it can certainly be termed as the temporary misappropriation. Considering the aforesaid fact and considering the fact that by said misconduct on the part of the petitioner, it had affected the image and credibility of the bank and therefore, after departmental inquiry if the services of the petitioner was terminated, it cannot be said that there is any illegality committed by the disciplinary

authority and therefore, the Industrial Tribunal has rightly allowed the appeal by quashing and setting aside the judgment and and award passed by the Labour Court, Kalol. As such, there is no illegality committed by the Industrial Tribunal in allowing the said appeal and quashing and setting aside the judgment and award passed by the Labour Court, Kalol and confirming the order passed by the disciplinary authority.

7) In view of above discussion, in my opinion, there is no substance in the present petition and as such, there requires no interference by this Court while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India, more particularly, when the factum of not depositing the sum of Rs.700/- by the petitioner in the account of the account holder has been admitted and proved against the delinquent. Therefore, the present petition fails and the same is dismissed accordingly at the threshold.

[M.R.Shah, J.]

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